

Hi Mark,

Thanks again for answering my questions. My goal is to use these conversations to draft a thoughtful and useful comment letter that contribute rather than stall the development of practical and effective regulations. In addition to making sure I understood your explanations, I am adding some concerns below each issue to spur more conversation and perhaps some creative solutions.

Issue 1: "Significant Change..."

For clarification:

"This bill would require the board to adopt regulations relating to the public hearing and that define the term "significant change in the design....not authorized by the existing [Solid Waste Facility] permit."

Yes; the CIWMB is required to the extent resources are available, adopt regulations that implement the noticing and public hearing requirements, and define the term "significant change in the design or operation of the solid waste facility that is authorized by the existing permit."

The definition of "Significant change in..." only comes into play at the end of the very end of the decision tree at the discretion of the LEA. If you have any change to design or operations, or any physical changes then the LEA will decide if you need to go through the Revised Permit Process or the Modified Permit Process, depending on whether or not they feel they need to add some terms or conditions to the SWF Permit.

To determine if a solid waste facilities permit needs to be revised, the LEA would need to answer three specific questions:

4. Is the change proposed for the SWF a change to the "design" or "operation" of the facility as defined in Title 27 section 21663(a)(1) and (2)?
5. Is the change purely administrative such that it will not result in any physical change?
6. Has the LEA determined that the physical change will require a term or condition to be added or changed in the permit in order to (a) comply with SMS and/or (b) avoid or lessen any potential affect to public health, safety, and/or degradation to the environment, including the creation of a public nuisance?

As you can see in reading the questions, while the LEA has some discretion, the questions are specific enough that the LEA would have limited latitude in making their decision. For example, the change is either "physical" or not, or will result in the creation of a public nuisance unless the LEA adds a term or condition in the permit to address it. LEAs certainly won't be making their decision based on whether they "feel" the need to add some terms or conditions.

In other words, the standard for whether a change is "significant" is the same as the standard for whether the change requires preparation of a Revised Permit, with the LEA ultimately having the last word.

Technically, the LEA does not have the "last word." PRC 44004(e) provides the operator 30 days to appeal the LEA's decision to a hearing panel and requires the LEA to notice the hearing.

Questions for follow up:

Isn't that what is currently done?

Not exactly. While the LEA currently has discretion in determining if a revised permit is necessary or not, there is no process defined in regulation that would allow a permit to be modified. Currently, other than allowing the "owner" "operator" and "address" to be changed in the SWFP without a revision, all other changes to a SWFP, including minor administrative changes, can only be done through a permit revision process.

What we are proposing is a thought process that guides the LEA as they consider changes proposed by the operator at the solid waste facility. Using the decision tree, the LEA can determine if the proposed change can be approved through a RFI amendment, a modified permit, or a revised permit. Currently, without this guidance, some proposed changes are processed by LEAs as RFI amendments while the same types of changes are processed by different LEAs as revised permits.

If the LEA has the last word will the "term" still be defined by the Waste Board?

The phrase "significant change ..." still needs to be defined. We are attempting to define the phrase through the decision tree methodology. As noted above, there is a need for consistency in the process used by LEAs in determining if a change is significant enough to require a revised permit or whether the permit change can be handled via a "modified" permit process. Trying to define just the "term" significant change has been tried for 20+ years without success. We believe a process is more feasible and applicable statewide by all LEAs. Also AB 1497 required the phrase to be defined and as the phrase has multiple layers, the decision tree approach allows each layer to be addressed. If the Board did not define the phrase as required, we would not be compliant with state law.

Issue 2: Public Noticing and Hearing Requirements.

Question for follow up:

Can the type of community outreach that would address EJ concerns be built into the Public Noticing and Hearing Requirements, as a campaign under the "improve public awareness" bullet?

While it may not address all EJ concerns, it could improve public awareness of proposed changes at solid waste landfills. We still need to identify what types of noticing and hearing requirements would be necessary to help address EJ concerns. We welcome your comments on this.

Issue 3: Relationship of SWF Permit to Local Land Use.

Questions for follow up:

Can a decision tree be formulated for the EA's in the same way that one has been formulated for the LEAs?

Not sure what you are referring to. First let me clarify that LEAs are EAs that are local. EA is a term applied to LEAs as well as when the Board is the enforcement agency for a local jurisdiction. If you are asking if a decision tree can be developed for determining completeness relative to use permits in the solid waste facility permit application package, then the answer would be yes, one could. Any additional comments on this would be appreciated.

Do permits beyond the SWFP fall outside the scope of the Waste Board's authority?

Yes. In the case of local land use entitlements, land use decisions regarding the siting and expansion of solid waste facilities are determined at the local level by local government through local planning and zoning ordinances. The LEA determines if the design and operation of the facility will meet all State requirements, ensuring protection of the public health and safety and prevention of environmental damage. It is not the LEA's job to ensure that the CUP is consistent with the SWFP, but the approach described assumes that an LEA should not approve changes at a site that will require revision to the CUP before the CUP is revised.

#### Issue 4: Tracking Community Outreach Efforts

For clarification:

Operators do not have to increase the amount of community outreach they do.

Correct; our intent is not to increase the amount of community outreach currently undertaken by operators.

They are being asked to track any outreach they do in a comprehensive manner though it can be done in a binder in the same way that special occurrences, such as fires, are logged. Operator would log individuals calling about odors or children visiting on field trips. Keeping track of this information will help support not having a separate stand alone LEA Permit Revision Hearing.

A hearing for a revised permit is still required pursuant to AB 1497. The tracking outreach effort that we are considering is a separate issue from the hearing requirement and the use of one would not take the place of the other.

Concerns:

No parameters for the collection or use of this information exist.

The parameters still need to be identified and we welcome your comments on this.

The concept of community outreach suggests a systematic attempt to provide services beyond conventional limits, as to particular segments of a community, (socio-economic for example). Should operators collect information about individuals making complaints and anyone visiting landfills under a binder titled " community outreach" my concern would be that it could be used against the operator to highlight how little "community outreach" (as it is generally used and understood) is done--even if they are in complete compliance when it comes to this regulation and law.

Good point. This is not our intent and we will keep your concerns in mind as we begin drafting the regulations.

In regulation, could another approach be to require the Board and the LEAs and/or EAs to keep regional logs of all outreach efforts with the help of operators who could supply periodic data on their "general contact with the public--as it supports EJ goals?" In essence keeping the state-mandated local program within the EAs or LEAs and outside of the solid waste operations?

We could, but the information would still need to come from the operators, who would need to keep track of the information before passing it to the LEAs. We will consider this as we begin drafting regulations.

Questions for follow up:

How often will this information be called upon?

Currently, CIWMB agenda items for new and revised permit actions require a description of the level of community outreach used for purposes of addressing EJ as it relates to the permit actions being considered. The information is received from LEAs who often depend on operators for details.

In the future, there could be requests for this information as part of the State's ongoing EJ effort.

Will a list of people and dates really be enough to satisfy the regulation?

We still need to identify what types of information should be collected and welcome your comments on this.

Is that really in the intent of the EJ concerns behind it?

Yes; there has been increasing interest in EJ at State and federal levels.

It sounds as though the information is needed now. If that is the case, could this information be collected in retrospect by the EA and the Local EA, if they do send out notices for public hearings?

Currently the information is collected from the LEA who often depends on the operator for details. It not clear regarding your question on EAs collecting data through a notice process, can you elaborate?

Keeping track of this information will help support not having a separate stand alone LEA Permit Revision Hearing.--Wouldn't this be preferable for operators than keeping track of a log?

The tracking outreach effort that we are considering is a separate issue from the hearing requirement and the use of tracking outreach does not take the place of a permit revision hearing. Currently, there is no requirement in statute or regulation for tracking outreach efforts. AB 1497 requires the LEA to notice and hold at least one public hearing prior to making a determination on an application to revise a SWFP. We are looking at the possibility of paralleling the CIWMB's CDI regulations, which allow a comparable hearing to be substituted or combined with another hearing in which the LEA participates. Thus, having good information about past hearings could be a factor in determining if a separate LEA hearing is required.

Also, I can't speak on the amount of public contact the companies we work with have, but if they have only two accounts of public contact or community outreach, would that really support not having a separate hearing?

Please see my answer above.

#### Issue 5: Five Year Permit Review Noticing

Just for clarification:

The Board wanted to be involved in the review noticing, found it didn't add very much to the process and now is returning the responsibility to the oversight to the LEA.

Actually, before AB 1220, the CIWMB provided the noticing to the operator and LEAs for full SWFPs as well as for registration and standardized permits.

#### Issue 6: Surprise Random Inspections

Questions for follow up:

If the idea is to "apply to other solid waste operations and facilities CDI regulatory requirements," why not just take the language from the CDI surprise random inspection regulations?

We will consider your idea of incorporating the language from the CDI regulations, but will probably focus on the sentence: "To the greatest extent possible, all inspections shall be unannounced and shall be conducted at irregular intervals." The remaining language that you cite below applies specifically to inert debris fill operations and would not apply to other solid waste facilities, many of which are inspected monthly.

Title 14. Div 7. Chap 3.0 (b) Inert debris engineered fill operations shall be inspected as necessary by the EA to verify compliance with State Minimum Standards. Inspections shall be conducted quarterly, unless the EA determines a lesser frequency is sufficient, but in no case shall the inspection frequency be less than annual. To the

greatest extent possible, all inspections shall be unannounced and shall be conducted at irregular intervals.  
Something like

Solid waste operations shall be inspected as necessary by the EA to verify compliance with State Minimum Standards. Inspections shall be conducted quarterly, unless the EA determines a lesser frequency is sufficient, but in no case shall the inspection frequency be less than annual. To the greatest extent possible, all inspections shall be unannounced and shall be conducted at irregular intervals.

This language sounds like it would address the application, the permissiveness, the surprise and flexibility the slides suggested.

Thank you for reading this far. I look forward to your responses.

Sincerely,

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